

Brok Vandersteen March 6, 2014

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HEALTHY ADVICE NETWORKS, LLC,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:12 CV 00610
)	
CONTEXTMEDIA, INC.,)	
)	
Defendant.)	

The deposition of BROK VANDERSTEEN, called by the plaintiff for examination, pursuant to notice, and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Joanne Ryan, CSR and Notary Public in and for the County of Cook and State of Illinois, on March 6, 2014, at 1:35 p.m., at 222 North LaSalle Street, suite 2400, Chicago, Illinois.

Brok Vandersteen March 6, 2014

1 PRESENT:

2 VEDDER PRICE, P.C.
3 BY MS. JEANAH PARK
4 222 North LaSalle Street, Suite 2400
5 Chicago, Illinois 60601
6 (312) 609-7500
7 jpark@vedderprice.com

8 appeared on behalf of the plaintiff;

9 SIDLEY AUSTIN, LLC
10 BY MR. RICHARD J. O'BRIEN
11 One South Dearborn Street
12 Chicago, Illinois 60603
13 (312) 853-7283
14 robrien@sidley.com

15 appeared on behalf of the defendant.
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1 BROK VANDERSTEEN,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MS. PARK:

6 Q Good afternoon, Mr. Vandersteen. We were
7 chatting a little bit before we were on the record,
8 but for the record, my name is Jeanah Park, I
9 represent the plaintiff Healthy Advice Networks, LLC
10 in this matter. And this is the deposition of Brok
11 Vandersteen pursuant to notice.

12 would you please state and spell your name
13 for the record.

14 A Brok Vandersteen, B-R-O-K,
15 V-A-N-D-E-R-S-T-E-E-N.

16 Q Thank you. Have you ever been deposed
17 before?

18 A Never.

19 Q Okay. I'm just going to go over a couple
20 ground rules, and I'm sure you went over them with
21 your attorney.

22 But this is going to be in a question and
23 answer format. If I ask a question and you don't
24 understand the question, I just ask that you ask me

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1 to repeat it or rephrase it. If you answer, I'll
2 assume that you understood it and that you're
3 answering truthfully. Is that fair?

4 A Yes.

5 Q And as you can see, we have a court
6 reporter here today, so I just ask that your answers
7 all be verbal so the court reporter can get down all
8 of your answers, and that we try not to talk over
9 one another. So let me finish before you start
10 answering, I will let you finish before I start
11 asking my next question. Is that fair?

12 A Yes.

13 Q If you need a break at any time, feel free
14 to ask for one, ask your attorney for one. The only
15 thing that I ask is if there's a question pending,
16 that you answer the question before you ask for a
17 break. Is that fair?

18 A Yes.

19 Q Okay. Is there any reason why you can't
20 testify truthfully today?

21 A No.

22 Q And just so that we're clear, I'll probably
23 use the term HAN, and by that I mean Healthy Advice
24 Network, and Context I mean ContextMedia. Does that

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1 make sense?

2 A Yes.

3 Q Okay. Did you prepare for your deposition
4 today?

5 A would you clarify?

6 Q I'm sorry. Did you prepare for your
7 deposition?

8 A Yes.

9 Q How did you prepare?

10 A Meeting with Dick.

11 Q Okay. When did you meet with Dick?

12 A Last Friday.

13 Q How long did you meet with him?

14 A Roughly two hours.

15 Q Was anyone else present other than Dick?

16 A His assistant, I believe.

17 Q Jessica Johnson?

18 A Yes.

19 Q Okay. Did you review any documents when
20 you met with Dick?

21 A Yes.

22 Q What documents?

23 A Well, four e-mails.

24 Q Four or forty?

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1 A Just e-mails.

2 Q Four e-mails or forty e-mails?

3 A Four.

4 Q Okay. There's a difference. Did any of
5 the e-mails that you saw refresh your recollection
6 about the subject matter of this lawsuit?

7 A Yes.

8 Q Okay. Did you meet with anyone else other
9 than Dick to prepare for your deposition?

10 A No.

11 Q Did you discuss your deposition with anyone
12 else other than Dick?

13 A No.

14 Q Did you review any documents that have been
15 filed with the court in this case?

16 A Not that I'm aware of.

17 Q Okay. Anything else that you did to
18 prepare that we haven't covered?

19 A No.

20 Q Have you ever testified under oath before
21 today?

22 A No.

23 Q Have you ever been a party to a lawsuit?

24 A No.

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1 Q What's your date of birth?

2 A [REDACTED]

3 Q And what's your address?

4 A 939 West Belle Plaine, Apartment 1,
5 Chicago, Illinois, 60613.

6 Q Can you describe generally your education
7 after high school?

8 A Four-year degree.

9 Q Where did you get your degree?

10 A University of St. Thomas.

11 Q What was your degree in?

12 A Marketing.

13 Q And when did you graduate?

14 A May 2010.

15 Q Did you receive any formal education other
16 than your degree from St. Thomas?

17 A No.

18 Q Do you have any professional
19 certifications?

20 A No.

21 Q And do you understand that you're here
22 today because of your position with ContextMedia?

23 A Yes.

24 Q And when were you hired by Context?

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1 A June of 2011.

2 Q What position were you hired for?

3 A Member outreach executive.

4 Q Is that your current title today?

5 A Yes.

6 Q How many employees did Context have at the
7 time you were hired in June 2011?

8 A Between 10 and 15.

9 Q Were there any other member outreach
10 executives other than yourself when you were hired?

11 A Yes.

12 Q How many?

13 A I believe four or five.

14 Q Four or five?

15 A Yes.

16 Q Who were they, if you know?

17 A There was Jordan Smick, Pat Garrety, Devon
18 Tatum, and Matt Garms.

19 Q As between Jordan, Pat, Devon and Matt, are
20 any of them still with the company?

21 A Devon and Matt.

22 Q What job did you have before you came to
23 ContextMedia?

24 A I was a sales representative for Thompson

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1 Writers.

2 Q How long were you with Thompson Writers?

3 A Nine months.

4 Q What were your general duties and
5 responsibilities at Thompson Writers?

6 A I reached out to existing customers and
7 sold them new product.

8 Q How did you reach out to the customers?

9 A Telephone.

10 Q Okay. Why did you leave Thompson?

11 A The opportunity with Context.

12 Q How did you find out about the opportunity
13 with Context?

14 A Through a friend.

15 Q So you have been with Context for a little
16 under three years, is that right?

17 A (Indicating.)

18 Q Can you --

19 A Correct.

20 Q Thank you. Can you describe your duties
21 and responsibilities as a member outreach executive?

22 A Our duties are to bring on new members.

23 Q And by new members, what do you mean?

24 A Clinics using our equipment.

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1 Q Physician practices, is that fair to say?

2 A That's fair.

3 Q And what equipment are you referring to?

4 A Our televisions.

5 Q What do the televisions do?

6 A Play content.

7 Q What kind of content?

8 A Educational.

9 Q About what?

10 A Health.

11 Q Any specific categories of health?

12 A Eating, exercise, inspiration.

13 Q Are there types of physicians practices --
14 strike that.

15 Are there specific specialties that Context
16 focuses on?

17 A Yes.

18 Q And what are those specialties?

19 A Diabetes, rheumatology, cardiology, primary
20 care, neurology.

21 Q Are you responsible for a particular kind
22 of specialty or do you call all types of physician
23 practices?

24 A Currently a specific type.

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1 Q And what is that kind?

2 A Rheumatology.

3 Q What kind of practice did you focus on --
4 well, strike that.

5 You said currently. When did rheumatology
6 become your focus?

7 A January of 2014.

8 Q And what was your focus before January of
9 2014?

10 A All specialties.

11 Q How is it that you got assigned to focus on
12 rheumatology?

13 A Could you clarify?

14 Q What led to the change from you going from
15 all practice to just rheumatology?

16 A They just divided the team.

17 Q Who is they?

18 A Management.

19 Q And who do you report to?

20 A Matt Garms.

21 Q Have you always reported to Matt Garms?

22 A Yes.

23 Q Who is Matt Garms report -- strike that.

24 Who does Matt Garms report to, if you know?

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1 A It's a combination of the C Suite. Jim
2 Demas, Rishi Shah.

3 Q Do you consider Rishi Shah to be your boss?

4 A No.

5 Q Do you consider Jim Demas to be your boss?

6 A No.

7 Q Do you ever interact face to face -- I
8 shouldn't say face to face -- Strike that.

9 Do you ever been interact directly with
10 Rishi Shah?

11 A Yes.

12 Q In what circumstances?

13 A Professionally and casually.

14 Q Okay. So let's talk about your
15 professional interactions with Rishi Shah. On what
16 occasions do you interact with him?

17 A End of the year review. And that's about
18 it, honestly.

19 Q Do you ever report directly to Rishi Shah?

20 A No.

21 Q You said you're -- and I'm talking about
22 the 20 -- you didn't come on until -- from the time
23 you were hired on June 2011 through I guess January
24 of 2014, you said that your job duties and

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1 responsibilities as an MOE were to bring on new
2 members, right?

3 A Correct.

4 Q Can you give me a little bit more detail
5 than that?

6 A Anything specifically?

7 Q Yes. What do you do day to day?

8 A I call physician practices, tell them about
9 our service, and try to bring them on as a member.

10 Q How do you know who to call?

11 A I have a list of leads.

12 Q Where does the list come from?

13 A Management.

14 Q How is that list given to you?

15 A It is preloaded into our data base.

16 Q What kind of software is the data base?

17 A Sales Force.

18 Q Sales Force?

19 A (Indicating.)

20 Q Did Context ever use Quickbase?

21 A Yes.

22 Q When did Context switch from Quickbase to
23 Sales Force?

24 A I can't remember specifically. Toward the

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1 end of last year.

2 Q Do you know why Context switched from
3 Quickbase to Sales Force?

4 A It didn't meet our need.

5 Q In what way?

6 A It was a bit of an outdated software.

7 Q What functionalities does Sales Force have
8 that Quickbase did not?

9 A It allows all departments to share the same
10 view of a clinic account.

11 Q What other departments are there other than
12 member outreach?

13 A Member service executive, IT, and
14 marketing.

15 Q And you said that management gets a list of
16 practices -- sorry. Strike that.

17 Management gets a list of leads for the
18 member outreach team to use to call potential
19 members, right?

20 A They provide us with a list.

21 Q Okay. Do you know where management gets
22 the list?

23 A No.

24 Q Does the term J & J mean anything to you?

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1 A I believe that's Johnson & Johnson.

2 Q Do you know that from your employment with
3 Context or just generally speaking?

4 A Generally speaking.

5 Q Does the term J3 mean anything to you?

6 A No.

7 Q Do you know if Context receives a list of
8 practices to call from J & J?

9 A No.

10 Q Do you know if Context receives a list of
11 practices to call from J3?

12 A No.

13 Q Do you know who at Context would know this,
14 that is, where the list of practices comes from?

15 A Senior management.

16 Q When you say senior management, who do you
17 refer to specifically?

18 A Rishi Shah, Shradha Agarwal, Jim Demas,
19 Brad Purdy.

20 Q Who was the last person?

21 A Brad Purdy.

22 Q Okay. What, if you know, is Shradha
23 responsible for?

24 A Strategy.

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1 Q And in what way?

2 A Business strategy. I don't know the
3 specifics.

4 Q Is she based in New York or in Chicago?

5 A Chicago.

6 Q Okay. What is Brad Purdy's job?

7 A He's our chief operating officer.

8 Q And what does that mean, if you know?

9 A I don't know specifically.

10 Q Do you know generally?

11 A No, to be quite honest.

12 Q Do you know if Context ever -- Strike that.

13 Do you know if Context has a list of
14 Healthy Advice practices?

15 A No.

16 Q When I say Healthy Advice, do you know what
17 I'm referring to?

18 A Yes.

19 Q And when I say Patient Point, do you know
20 that they're now the same company?

21 A Yes.

22 Q Other than management providing you with a
23 list of leads, do you know of any other method
24 through which Context identify the practices to

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1 call?

2 Let me try to clarify on that. Do you know
3 if Context engages outside firms or consultants to
4 get lists of potential members?

5 A I don't know.

6 Q Does Context target certain specific types
7 of practices?

8 A Could you clarify?

9 Q Yes. Are there -- well, you mentioned that
10 Context shows content in diabetes, rheumatology,
11 cardiology, primary care and neurology I think you
12 said?

13 A Correct.

14 Q In those specialties are there types of
15 practices that Context focuses on?

16 A Not that I'm aware of.

17 Q Okay. You don't know if they try to
18 recruit members who are parts of certain hospital
19 systems or certain geographical areas or any other
20 type of way to categorize the practices?

21 A No.

22 Q Has anyone in Context management talked to
23 you about obtaining more valuable practices?

24 A No.

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1 Q So let's walk through kind of your day at
2 ContextMedia. Strike that.

3 You said that when you were first hired you
4 were responsible for calling all types of practices,
5 not just rheumatology, right?

6 A Correct.

7 Q And that was consistent throughout your
8 time there until January 2014 when you were told to
9 focus on rheumatology?

10 A Correct.

11 Q Okay. So let's kind of walk through your
12 day as an MOE. How much of your day do you spend on
13 the phone?

14 A All of it.

15 Q All of it. I guess you're sick of talking
16 to people. Do you have a set number of calls that
17 you have to make per day?

18 A No.

19 Q Does management give you a target number,
20 like try to make 50 phone calls or try to make
21 contact with 50 live people, anything like that?

22 A Yes.

23 Q What's that number or what's that metric,
24 if you can tell me?

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1 A Roughly 80 a day.

2 Q And is it make 80 calls or talk to 80
3 people?

4 A Eighty calls.

5 Q Do you have a set number of e-mails that
6 your target is to send?

7 A No.

8 Q Okay. As between e-mail and phone --
9 Strike that.

10 Do you use e-mail to reach out to
11 practices?

12 A Yes.

13 Q What percentage would you say do you spend
14 calling versus e-mailing practices?

15 A 80/20.

16 Q Eighty phone calls, twenty e-mails?

17 A Yes.

18 Q Do you use faxes at all to reach out to
19 practices?

20 A Yes.

21 Q How many faxes -- or is there a target goal
22 of taxes that you are to send to practices?

23 A No.

24 Q Where do faxes factor into the 80/20

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1 equation?

2 A I couldn't tell you.

3 Q On average how many faxes do you send out a
4 day, and this is until January of 2014?

5 A Anywhere from one to thirty.

6 Q Do you have an opinion about what method is
7 most effective to make a sale?

8 A No.

9 Q What's your preferred method of contacts?

10 A Phone.

11 Q Why is that?

12 A You can make more phone calls then you can
13 send e-mails.

14 Q It's more efficient?

15 A Yes.

16 Q Do you think it's more effective?

17 A I don't know.

18 Q Do you have a script that you use when you
19 call practices?

20 A No.

21 Q Does Context use a script and you're just
22 like, I'm not going to use the script?

23 A No.

24 Q Okay. Let's say you're just kind of

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1 placing a cold call to a practice that no one has
2 ever reached out to before. What information do you
3 have in your hand before you call?

4 A None.

5 Q Just the name of the practice and that's
6 it?

7 A Phone, name, doctor, physician name.

8 Q Who is it that you're trying to ultimately
9 reach when you place a call like that?

10 A The decision maker.

11 Q And who is the decision maker typically?

12 A It depends. Usually it's the practice
13 manager.

14 Q But not the physician himself or herself?

15 A It varies.

16 Q Okay. But usually it's either sort of the
17 office manager or the doctor, correct?

18 A Yes.

19 Q Okay. Going back to lists. Were you ever
20 in your time from the time you were hired until
21 January of 2014 provided with a call list that has a
22 particular purpose of any kind, like you have to hit
23 all 50 of these people or any kind of specific
24 purpose?

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1 A No.

2 MS. PARK: Let's mark this as Exhibit 46.

3 (Plaintiff's Exhibit 46

4 marked for identification.)

5 BY MS. PARK:

6 Q Mr. Vandersteen, I'm showing you an exhibit
7 that's marked Plaintiff's Exhibit 46. Just take a
8 look at this. And if it helps, it's actually
9 supposed to be like this, which is why I didn't
10 staple it.

11 A Side by side here?

12 Q Yes. And I think all three, because they
13 coordinate together.

14 A Okay.

15 Q Do you recognize this document in its paper
16 form?

17 A No.

18 Q Let me ask you about -- there's little
19 numbers at the bottom of the document. Do you see
20 that?

21 A Yes.

22 Q See Context prod 904?

23 A Yes.

24 Q And on that document do you see your name

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1 under the Column P?

2 A Yes.

3 Q What does that signify? I'm just trying to
4 figure out what this document is?

5 A It signifies that I had touched base with
6 this clinic.

7 Q Okay. Is it possible that this is a
8 printout of a Quickbase data base that you were
9 using to keep track of phone calls that you made?

10 A Yes.

11 Q Okay. And in the Column Q on that same
12 Context prod 904, do you see all the notes that were
13 in that column?

14 A Yes.

15 Q Are those notes that you fill out? For
16 example, if it says Brok Vandersteen, does that mean
17 that the note that says calling Jill B-O-M is
18 something that you wrote?

19 A Yes.

20 Q Let's look at Context prod 903, under
21 column H. And you can see it's row three across all
22 three pages. So this is still what appears to be a
23 Brok Vandersteen contact, do you see that?

24 A Uh-huh.

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1 Q So in Column H it says J & J priority room
2 list. Do you know what that means? Does that mean
3 anything to you?

4 A No.

5 Q It says lead source under the H. Is it
6 possible that that's where the lead came from?

7 MR. O'BRIEN: Object to the form, but you
8 can answer.

9 A Yes.

10 BY MS. PARK:

11 Q Okay. But you don't know exactly what that
12 column means?

13 A No.

14 Q Okay. One last thing, again back to 903.
15 In Column L do you see it says other competitor
16 installed other advertising on that?

17 A Yes.

18 Q Again, looking at that row three that had
19 the J & J priority room list, it says competitor
20 installed. What does that mean?

21 A It means one of our competitors installed
22 in the practice.

23 Q So the practice was using a competitor
24 screen instead of Context?

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1 A Correct.

2 Q And who are Context's competitors?

3 A Accent Health, Patient Point, Health Media
4 Network, Health Focus Media. There may be a couple
5 others.

6 Q But those are the only ones you can think
7 of right now?

8 A Yes.

9 Q Okay. Would you say that Context has a
10 primary competitor?

11 A No.

12 Q Okay. So going back to kind of -- you're
13 done with that one. Going back to kind of a day in
14 the life of a member outreach executive.

15 So you make a call, and the practice tells
16 you we have a competitor and we're not interested.
17 What happens next?

18 A I would ask who is the competitor.

19 Q Okay. And then what do you do?

20 A Why are you not interested?

21 Q So you try to convince them to switch from
22 their competitor to Context?

23 A I may.

24 Q On what occasions would you not try to

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1 convince them to switch?

2 A If they don't have a competitor.

3 Q Right. But if they do have a competitor,
4 you would as a matter of course try to get them to
5 switch to ContextMedia?

6 A I'd try to promote our practice.

7 Q Okay. And that means convincing the
8 practice that ContextMedia's product is better than
9 whatever they're using?

10 A Yes.

11 Q Okay. What happens if the practice says, I
12 am really not interested and wants to get off the
13 phone with you, what do you do next?

14 A Explain our services to them.

15 Q Okay. If the practice ends the call, what
16 do you do after that?

17 A Note it in our notes.

18 Q Okay. Do you call the practice again, keep
19 trying?

20 A At some point.

21 Q How long do you usually wait before you
22 call the practice again?

23 A It varies.

24 Q On what?

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1 A Nothing specifically.

2 Q Do you ever put them on a do not call ever
3 again list?

4 A No.

5 Q Does Context have a do not call list?

6 A Not that I'm aware of.

7 Q If you get a call and the practice says,
8 yeah, that sounds okay, I'm not really sure, what do
9 you do?

10 A Try to understand what they're not sure
11 about.

12 Q Okay. Does your strategy change depending
13 on whether the practice already is using a
14 competitor or the practice doesn't have any TV of
15 any kind in its office?

16 A No.

17 Q Are you incentivized in any way to try to
18 switch a competitor versus install a new system in a
19 practice?

20 A Sometimes.

21 Q Okay. On what occasions are you
22 incentivized?

23 A Monthly. I mean, it just varies.

24 Q Okay. Do you get bonus if you sign up more

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1 competitor switch-outs versus new installations?

2 A Sometimes.

3 Q Okay. And on what occasions do you get a
4 bonus if you sign up more competitor switch-outs?

5 A It truly depends.

6 Q On what?

7 A I don't know.

8 Q You don't know how your bonus is paid?

9 A Sometimes there's a bonus, sometimes there
10 is not.

11 Q When is there a bonus?

12 A When we removed a competitor.

13 Q Okay. What's the bonus?

14 A Additional money.

15 Q Okay. Do you get more money if the
16 competitor is Healthy Advice versus Accent Health
17 versus Health Monitor?

18 A At times, yes.

19 Q Okay. What's your bonus if you switch
20 out -- well, just tell me, how is the bonus
21 structured?

22 I'm trying to understand if you switch 100
23 practices in a month and 50 of them are Healthy
24 Advice, what would your bonus be?

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1 A Are you asking for the specific number?

2 Q Yes. I'm asking how it's calculated.

3 A It's per sale. We receive an additional
4 dollar amount of somewhere between \$50 to \$250.

5 Q Okay. What's the bonus if you switch an
6 Accent Health practice?

7 A Currently nothing.

8 Q What was it in the 2011 to 2014 time frame?

9 A Anywhere between \$50 and \$100.

10 Q What was your bonus during that same time
11 frame if you switched out a Healthy Advice practice?

12 A \$50 to \$100.

13 Q And what about a Health Monitor practice,
14 same time frame?

15 A Anywhere from zero to \$100.

16 Q So Accent Health and Healthy Advice you
17 would receive more of a bonus than Health Monitor?

18 A Yes.

19 Q Okay. Was there ever a time when you would
20 receive the biggest bonus if you switched out a
21 Healthy Advice practice?

22 A Yes.

23 Q What was that time?

24 A I don't remember specifically.

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1 Q Can you generally remember?

2 A You mean beginning of last year to
3 currently?

4 Q Beginning of 2013?

5 A Yes.

6 Q Do you remember what your bonus was if you
7 switched a Healthy Advice practice at the time you
8 were hired?

9 A No.

10 Q But something between \$50 and \$100?

11 A I don't remember.

12 Q Did it ever get more than \$100 to switch
13 out a Healthy Advice TV?

14 A Yes.

15 Q What was the highest bonus you received for
16 switching out a Healthy Advice practice?

17 A \$250.

18 Q Per practice?

19 A Yes.

20 Q When was that?

21 A I don't remember.

22 Q Do you recall generally when that was?

23 A Sometime in the last year.

24 Q Was that in effect in 2011?

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1 A I don't remember.

2 Q Do you know who set the bonus structure?

3 A Management.

4 Q Anyone specific in management as between
5 Jim Demas, Rishi Shah, Shradha Agarwal and Brad
6 Purdy?

7 A I don't know who would have made the call.

8 Q Did anyone come to you directly and say,
9 Brok, this is our bonus structure, here it is?

10 A Matt Garms.

11 Q Anyone else convey ContextMedia's bonus
12 structure to you other than Matt Garms?

13 A I can't remember.

14 Q Do you know why you received the highest
15 bonus for practices that were switched from Healthy
16 Advice screens?

17 A Say that again?

18 Q Do you know why you received the highest
19 bonus for practices that were switched from Healthy
20 Advice screens?

21 A No.

22 Q Did you ever ask why?

23 A No.

24 Q You didn't really care, right? What was

Brok Vandersteen March 6, 2014

1 your salary when you were hired in June of 2011?

2 A \$42,500, I believe.

3 Q And what's your salary currently?

4 A \$60,000.

5 Q When you were hired in June 2011, your
6 salary was \$42,500. Do you know approximately how
7 much you earned in bonus?

8 A When?

9 Q Between June of 2011 and let's say January
10 of 2012, I guess the year of 2011.

11 A I don't remember.

12 Q Was it more than \$42,500?

13 A No.

14 Q So your primary compensation was through
15 your salary, not your bonus?

16 A Correct.

17 Q Is that the same for 2012?

18 A Yes.

19 Q And for 2013?

20 A Yes.

21 Q What was your salary in 2012?

22 A \$50,000.

23 Q How is your bonus paid?

24 A I'm sorry. 2012?

Brok Vandersteen March 6, 2014

1 Q 2012.

2 A It stayed the same. Actually, 2012 it
3 stayed the same as 2011.

4 Q So 2013 it was \$50,000?

5 A Correct.

6 Q How often was your bonus paid?

7 A At each paycheck.

8 Q And how often are you paid?

9 A Twice a month.

10 Q How would you keep track of the number of
11 practices that you switched?

12 A I didn't.

13 Q Did you just trust management's
14 calculations that your bonus was correct?

15 A Yes.

16 Q If you wanted to, could you find out how
17 many practices you switched or signed up or anything
18 about your personal sales achievements?

19 A Yes.

20 Q Where would you go to look?

21 A I might ask Jim Demas.

22 Q But for the most part, you agreed that
23 whatever your bonus was was -- accurately reflected
24 the amount of practices that you switched?

Brok Vandersteen March 6, 2014

1 A Yes.

2 Q Did you get a bonus for signing up just
3 brand new practices who didn't have any TV
4 whatsoever?

5 A On top of a regular bonus?

6 Q I guess my understanding is that you got a
7 bonus for switching or for signing up a practice
8 that switched from a competitor.

9 Did you receive a bonus for signing up a
10 brand new practice that wasn't using anything?

11 A Yes.

12 Q What was that bonus?

13 A Between \$75 and \$150.

14 Q Do you know what factors went into whether
15 you would get \$50 or \$75 or \$100 or \$150?

16 A No.

17 Q Did management tell you ahead of time what
18 the bonus would be?

19 A Yes.

20 Q So you always knew -- I guess I'm trying to
21 understand. You always knew March 1st that your
22 bonus for signing up a switch versus a new
23 installation versus a Healthy Advice would be --
24 there would be a set number before the month

Brok Vandersteen March 6, 2014

1 actually started?

2 A Yes.

3 Q Okay. How did Matt convey the bonus
4 structure to you?

5 A Verbally.

6 Q Okay. And how often was the bonus
7 structure set?

8 A Annually.

9 Q So for a whole year you would get \$80 for a
10 Healthy Advice or \$100 for Accent Health or \$75 for
11 a new sign up?

12 A No.

13 Q When would it change then?

14 A Annually. The base commission is annually
15 changed.

16 Q Okay. So you would receive a base
17 commission, and then you would receive a bonus on
18 top of that based on what kind of practice you
19 switched?

20 A Correct.

21 Q Okay. How often was that extra bonus
22 determined?

23 A Say that again.

24 Q The extra bonus that you would receive on

Brok Vandersteen March 6, 2014

1 top of the base commission, how often was that
2 determined?

3 A I'm not sure.

4 Q So there was no set timetable for the extra
5 bonus for switching specific types of competitors or
6 signing up the new practice or signing up the
7 specific specialty?

8 A No.

9 Q They would just kind of tell you at any
10 given time?

11 A Yes.

12 Q You talked about there being goals for you
13 to place a certain number of calls per practice.
14 Did you have sales goals as well?

15 A Yes.

16 Q How often were those goals set?

17 A Monthly.

18 Q Okay. Were those goals broken down --
19 strike that.

20 was it just sign up 100 new practices or
21 were they broken down by sign up 100 new Healthy
22 Advice practices or 50 Accent Health practices?

23 A Just general practices.

24 Q Sign up new members, we don't care where

Brok Vandersteen March 6, 2014

1 they come from?

2 A Correct.

3 Q Okay. Going back to kind of your sales
4 practice. Let's say that you call a practice and
5 they're like, great, we want to go with Context.
6 what do you do next?

7 A If they're ready to sign up?

8 Q Yes.

9 A Direct them to our sign-up form.

10 Q what is the sign-up form?

11 A what is the sign-up form?

12 Q Yes.

13 A It's a form with a series of questions
14 verifying their address and practice information.

15 Q Are there any other forms that you give to
16 the practice, and I'm talking in again the 2011 to
17 2014 time frame?

18 A No.

19 Q And then once they fill out the forms, do
20 they send them back to you?

21 A Yes.

22 Q And then what do you do at that point?

23 A I submit it.

24 Q who do you submit it to?

Brok Vandersteen March 6, 2014

1 A My management, Matt Garms.

2 Q If you know, what does Matt do with them?

3 A He then forwards it on to our on-boarding
4 department.

5 Q Is that member services?

6 A Yes.

7 Q Okay. Once you sign up a new practice, is
8 that when your interaction with the practice ends?

9 A Yes.

10 Q Do you ever have occasion to get back in
11 touch with the practice?

12 A No.

13 Q What if you have confirmation of a sale and
14 the practice is with Patient Point or Healthy
15 Advice?

16 A What are you asking specifically?

17 Q I guess, have you had a practice say, yeah,
18 I would like to join Context, but I'm currently with
19 Healthy Advice, what do you do?

20 A I direct them to notify their provider to
21 cancel.

22 Q Do you give them any kind of form to
23 effectuate the cancellation?

24 A No.

Brok Vandersteen March 6, 2014

1 MR. O'BRIEN: You're talking about now or
2 at any time?

3 MS. PARK: No, I'm talking about -- I guess
4 just so I don't have to keep saying it.

5 Q Whenever I'm asking you a question, just
6 assume that it's from June 2011 to December of 2013.

7 A Okay.

8 Q So during that time frame, did you ever
9 give the practice an additional form to effectuate
10 the cancellation?

11 A Specifically for --

12 Q A Healthy Advice, Patient Point, yes.

13 A Yes.

14 Q What was that form?

15 A An authorization form.

16 Q Where did you get the authorization form
17 from?

18 A Management.

19 Q Do you know who drafted the authorization
20 form?

21 A No.

22 Q Do you know if the authorization form was
23 reviewed by an attorney?

24 A No.

Brok Vandersteen March 6, 2014

1 Q But you don't know specifically?

2 A I don't know.

3 Q Okay. Thank you. Do you know specifically
4 who in management drafted the authorization form?

5 A I don't know.

6 Q What did you understand the authorization
7 form to mean?

8 A I took it to mean that the patient or the
9 practice would like to switch.

10 Q Okay. Did you have any understanding of
11 whether the form gave the practice the right to
12 terminate its relationship with the competitor?

13 A I don't know.

14 Q Do you have any understanding as to whether
15 the form gave the practice the right to terminate
16 its contract with the competitor?

17 A I don't know.

18 Q You don't know or you don't have any
19 understanding?

20 A I don't -- I didn't know that side of their
21 business between them and HAN.

22 Q Okay. Did you ever talk about what the
23 form meant with Jim Demas?

24 A No.

Brok Vandersteen March 6, 2014

1 Q Did you ever talk about what the form meant
2 with Rishi Shah?

3 A No.

4 Q Did you ever talk about what the form meant
5 with Shradha Agarwal?

6 A No.

7 Q And how about Brad Purdy?

8 A No.

9 Q Did you ever talk to anybody about what the
10 authorization form meant?

11 A Matt Garms.

12 Q And what was the substance of that
13 communication?

14 A That gave us authorization to replace their
15 equipment.

16 Q It gave Context authorization to replace
17 Healthy Advice's equipment?

18 A Yes.

19 Q Okay. Other than Matt, did you speak with
20 anybody else at Context about what that
21 authorization form meant?

22 A No.

23 Q When you would send -- well, you know,
24 let's just mark this.

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1 (Plaintiff's Exhibit 47
2 marked for identification.)

3 BY MS. PARK:

4 Q I'm showing you what's been marked
5 Plaintiff's Exhibit 47. Do you recognize this
6 document?

7 A Yes.

8 Q Is this the authorization form that we were
9 just discussing?

10 A Yes.

11 Q And do you see that it looks -- it's blank.
12 It looks to be sort of a standard form, and there's
13 brackets and italics where it says office name and
14 office address. Do you see that?

15 A Uh-huh. Yes.

16 Q would you once you signed up a potential
17 member, who would fill out those blanks?

18 A The practice.

19 Q Okay. So you would send this form to the
20 practice in like word form and say fill out this
21 form?

22 A Correct.

23 Q And then what did you instruct the practice
24 to do after they filled out the form?

Brok Vandersteen March 6, 2014

1 A To sign it and return it.

2 Q Return it to you?

3 A Yes.

4 Q And then what did you do with the form once
5 you got it back?

6 A I included it with their sign-in form.

7 Q And then -- you mean that form, that
8 enrollment form?

9 A Yes.

10 Q And then you would give that package to
11 Matt Garms?

12 A Correct.

13 Q Did you ever send this form to Healthy
14 Advice?

15 A No.

16 Q Did you ever have -- well, strike that.
17 Was there ever a time when you would give
18 this form to the practice, tell them to fill it out
19 and return it to you, and the practice seemed to be
20 uncomfortable with that?

21 A Not that I remember.

22 Q Did the practice ever question you about
23 this form or what it meant?

24 A No.

Brok Vandersteen March 6, 2014

1 Q Did you ever have -- was there ever a time
2 when the practice simply didn't return the form to
3 you?

4 A Not that I remember.

5 Q Did ContextMedia get an authorization form
6 from every practice that had switched from Healthy
7 Advice?

8 A I believe so.

9 Q Did you get an installation authorization
10 form from every practice that you personally
11 switched from Healthy Advice?

12 A Yes.

13 Q Okay. Other than the enrollment form and
14 the authorization form, were there any other forms
15 that you would get from the practice to complete the
16 sale?

17 A No.

18 Q Have you ever sold a practice just by
19 e-mail alone without talking to them on the phone?

20 A No.

21 Q Were your calls to practices at any time
22 recorded, to your knowledge?

23 A No.

24 Q There was never a time where any of your

Brok Vandersteen March 6, 2014

1 calls were played back to you?

2 A No.

3 Q Or used for educational or instructional
4 purposes?

5 A No.

6 Q Do you know if any other member outreach
7 executive's phone calls to practices were recorded?

8 A No.

9 Q Meaning you don't know or you know for sure
10 that they were never recorded?

11 A They were never recorded.

12 Q How do you know that?

13 A We have never used that capability on our
14 phones.

15 Q So to the best of your knowledge, your
16 phone calls were not recorded?

17 A Correct.

18 Q Is it possible that Context recorded sales
19 people's phone calls and just didn't tell you?

20 A Maybe.

21 Q Was your productivity monitored in any way?

22 A Yes.

23 Q How so?

24 A Our software tracks how many calls are

Brok Vandersteen March 6, 2014

1 made.

2 Q Was your productivity monitored in any
3 other way?

4 A No.

5 Q Did Context keep track of the number of
6 e-mails you sent?

7 A No.

8 Q Did Context keep track of the number of
9 faxes you sent?

10 A No.

11 Q So it was all phone calls?

12 A Correct.

13 Q I'm sorry. The only thing that they kept
14 track of was the phone calls?

15 A Correct.

16 Q Did they keep track of how many times you
17 actually made contact with a person?

18 A No.

19 Q So as long as you placed, I think you said
20 80 phone calls, it doesn't matter if you left
21 voicemail or talked to somebody, as long as you just
22 placed the calls, right?

23 A Correct.

24 Q But is it fair to say that you were bonused

Brok Vandersteen March 6, 2014

1 based on the numbers of sales you made, so from your
2 perspective it would be best to actually talk to
3 somebody so you could make a sale, right?

4 A Yes.

5 Q What kind of training did you receive when
6 you joined Context?

7 A Anything specific?

8 Q Yes.

9 A An explanation of the product, and general
10 idea of who we would be reaching out to.

11 Q Was it a formal training?

12 A It was -- how so?

13 Q Were you, I guess, put in a conference room
14 with some other people and sat there all day and
15 listened to lectures and things like that, or did
16 you just shadow somebody and they just kind of told
17 you what to do?

18 A There was a period of sit down, and then
19 there was a time when we would also listen to other
20 people make phone calls.

21 Q Okay. Who led the training?

22 A Matt Garms.

23 Q Who else was in the training besides
24 yourself?

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1 A No one.

2 Q Okay. Did anyone other than Matt train you
3 or talk to you about the product or any other aspect
4 of Context's business?

5 A The department heads would explain sort of
6 their general role in the company.

7 Q Who spoke to you as between all the
8 department heads?

9 A For MS it would have been Silvia Velazquez.
10 For logistics it would have been Matt Coppola, and
11 for network operations it would have been Travis
12 Kemp.

13 Q Did Rishi or Jim Demas speak to you during
14 the training?

15 A No.

16 Q Did Shradha speak to you during the
17 training?

18 A No.

19 Q How many phone calls did you listen in on?

20 A I can't remember.

21 Q Was it more than 10?

22 A Yes.

23 Q More than 50?

24 A I don't know.

Brok Vandersteen March 6, 2014

1 Q Probably somewhere between 10 and 50?

2 A Sure, yes.

3 Q Were you told anything about Context's
4 competitors?

5 MR. O'BRIEN: During the training?

6 MS. PARK: Yes. Thank you.

7 A Yes.

8 BY MS. PARK:

9 Q What were you told?

10 A Their names and general differences.

11 Q Do you know why Context informed you about
12 its competitors?

13 A To be aware of what's in the market.

14 Q Did they talk to you specifically about
15 what to say if a practice tells you that they're
16 already using a competitor's display?

17 A No.

18 Q Did you watch a video loop of any -- I'm
19 sorry.

20 Did you watch a video loop of any of
21 Context's competitors?

22 A No.

23 Q Did you review any documents related to
24 Healthy Advice or any of Context's competitors?

Brok Vandersteen March 6, 2014

1 A Could you clarify that?

2 Q Yes. Was there a side-by-side comparison
3 sheet or any sort of one pager about Healthy
4 Advice's product versus Context's product?

5 A Yes.

6 Q Do you know who authored that?

7 A No.

8 Q What was the purpose of the side-by-side
9 comparison one pager?

10 A To highlight comparisons.

11 Q Did you feel that it was important for you
12 to know the differences between Healthy Advice and
13 Context?

14 A Somewhat.

15 Q In what way was it helpful?

16 A To know what their members may have playing
17 in their waiting room.

18 Q When you were trained, was there a formal
19 training manual that you were given?

20 A Yes.

21 MS. PARK: Mark this as Exhibit 48.

22 (Plaintiff's Exhibit 48
23 marked for identification.)
24

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1 BY MS. PARK:

2 Q Mr. Vandersteen, I'm showing you what's
3 been marked Plaintiff's Exhibit 48. Do you
4 recognize this document?

5 A Yes.

6 Q Is this the training manual that you were
7 given?

8 A Yes.

9 Q And in your job as a member outreach
10 executive, did you ever refer to this training
11 manual?

12 A Never.

13 Q Did you ever read this training manual?

14 A I can't remember.

15 Q But you never rely on this in connection
16 with your job with Context?

17 A Not once.

18 Q Okay. Other than the base commission and
19 then the extra bonus that you would receive for
20 switching certain types of practices and your
21 salary, were you compensated in any other way by
22 Context?

23 A No.

24 Q Did you receive any gift cards or any other

Brok Vandersteen March 6, 2014

1 sorts of incentives or anything like that?

2 A Yes, occasionally.

3 Q What would you receive a gift card for?

4 A It depends. Most sales in a month or week.
5 That's really it.

6 Q What amount were the gift cards in?

7 A Ten to fifty.

8 Q Were they like cash gift cards or Starbucks
9 or what kind of gift cards were they?

10 A Either.

11 Q But is it fair to say that they were always
12 tied to the amount of sales you made or the amount
13 of switches you made or anything like that?

14 A Tied to the amount of sales we made.

15 Q Okay. What was the biggest gift card that
16 you received?

17 A \$100.

18 Q Okay. So other than the gift card, the
19 bonuses, the commissions and your salary, were you
20 compensated in any other way?

21 A No.

22 Q Vacations to Aruba, anything like that?

23 A No.

24 Q Okay. We talked about the comparison sheet

Brok Vandersteen March 6, 2014

1 that you were given when you were first trained at
2 Context. Do you recall that?

3 A I recall you mentioning it.

4 Q But do you recall actually seeing kind of a
5 side-by-side comparison sheet between Healthy Advice
6 and Context?

7 A I do.

8 Q Were you given new or updated comparison
9 sheets from time to time during your time at
10 Context?

11 A I can't remember.

12 Q Did you ever review any of those comparison
13 sheets in detail?

14 A No.

15 Q Do you know why management gave you
16 comparison sheets between -- that compared Healthy
17 Advice and Context?

18 A For our general understanding.

19 Q Your general understanding of what?

20 A Comparisons between the two companies.

21 Q Do you know why management got the
22 information that they put in the comparison sheets?

23 A I believe from their website?

24 Q From Patient Point's website?

Brok Vandersteen March 6, 2014

1 A That's what I understand.

2 Q Do you have any reason to believe they got
3 the information anywhere else other than Patient
4 Point's website?

5 A No.

6 MS. PARK: Mark that Exhibit 49, please.

7 (Plaintiff's Exhibit 49
8 marked for identification.)

9 BY MS. PARK:

10 Q Showing you what's been marked Plaintiff's
11 Exhibit 49, Mr. Vandersteen. If you could take a
12 look at that, and let me know when you're finished.

13 A Okay.

14 Q Okay. This is an e-mail from you to Jeana
15 Loewe that was sent on March 12th, 2012. Do you
16 remember sending this e-mail?

17 A No.

18 Q Do you have any reason to think that you
19 didn't send this e-mail?

20 A No.

21 Q Who is Jeana Loewe?

22 A Jeana Loewe is a former employee at
23 Context.

24 Q Why was she -- well, I should say. This is

Brok Vandersteen March 6, 2014

1 an e-mail from you, but you're responding to an
2 e-mail she sent to you.

3 why did she send this e-mail to you, if you
4 know?

5 A To gather our feedback.

6 Q What was her job at Context?

7 A She was marketing.

8 Q What did she want your feedback about?

9 A What we're hearing from our members.

10 Q From whose members?

11 A Our competitors.

12 Q Okay. Did she ask you for information
13 about Context competitors on a regular basis?

14 A No.

15 Q Do you know why specifically she was asking
16 you at this time for information about your
17 competitors, Context's competitors?

18 A I don't know.

19 Q Okay. And you write, Hi, Jeana, Accent
20 Health, very general health, I believe the member is
21 liable for equipment. Healthy Advice starting to
22 include RA info. I believe the member is liable for
23 equipment, still lame as always.

24 what was the basis for you saying that the

Brok Vandersteen March 6, 2014

1 member is liable for equipment?

2 A Feedback from the members.

3 Q And what did you mean by the member is
4 liable for equipment?

5 A They're in charge of their equipment.

6 Q They're in charge of the competitor's
7 equipment?

8 A I think so.

9 Q So they're responsible for taking down the
10 competitor's equipment?

11 A I can't remember.

12 Q Do you know what you meant by the member is
13 liable for equipment?

14 A I can't remember.

15 Q Okay. Looking at Jeana's e-mail to you and
16 to the rest of the sales team, the third line from
17 the bottom that starts with as you know. Do you see
18 that?

19 A Yes.

20 Q She says, as you know that we are in great
21 need of RHN sales. Do you see that?

22 A Yes.

23 Q Did you know at the time that Context was
24 in great need of RHN sales?

Brok Vandersteen March 6, 2014

1 A Yes.

2 Q What was that based on?

3 A I don't know.

4 Q Who told you that Context was in great need
5 of RHN sales?

6 A I can't recall.

7 Q Did someone other than Jeana tell you that
8 Context was in great need of RHN sales?

9 A I can't remember.

10 Q Do you know why Context was in need of,
11 great need of RHN sales?

12 A We were starting a new network.

13 Q What was that network?

14 A Rheumatoid Health Network.

15 Q Do you know when Rheumatoid Health Network
16 started?

17 A I can't remember.

18 Q Sometime before March of 2012?

19 A Yes.

20 Q What did the fact that Context was starting
21 a new RHN network have to do with it needing a great
22 deal of RHN sales?

23 A It's important to grow a network, so to
24 grow a network, you need to get new members.

Brok Vandersteen March 6, 2014

1 Q Why was it important to grow your network?
2 why was it important for Context to grow its RHN
3 network?

4 A To reach more patients.

5 Q Why did Context need to reach more
6 patients?

7 A To educate them.

8 Q Do you know how Context is paid?

9 A Yes.

10 Q How?

11 A Sponsors.

12 Q Do sponsors, if you know, do sponsors pay
13 Context more if Context has more members in its
14 networks?

15 A Yes.

16 Q Did you ever see -- I might have asked this
17 earlier. But at any time between the time you
18 started and now, have you ever seen Healthy Advice's
19 loop?

20 A Yes.

21 Q When?

22 A I can't recall specifically.

23 Q Do you know generally when, approximately
24 when?

Brok Vandersteen March 6, 2014

1 A It would have been in the latter part of
2 2013.

3 Q How many times did you see it?

4 A Once.

5 Q Where did you see it?

6 A In a clinic office in Indiana.

7 Q How is it that you came to see Healthy
8 Advice's loop in an Indiana clinic office?

9 A I was sitting there waiting.

10 Q Were you there to see your own doctor or
11 were you there on behalf of Context?

12 A I was there on behalf of Context.

13 Q Were you asked to go in to the clinic
14 office specifically to watch the Healthy Advice
15 loop?

16 A No.

17 Q Why were you there?

18 A To meet the practice manager.

19 Q Okay. Were you there to make a sale?

20 A I was there to promote our product.

21 Q To what?

22 A To promote our services.

23 Q How often would you go make house calls, if
24 you will, to practices?

Brok Vandersteen March 6, 2014

1 A I can't remember a specific number, a
2 frequency.

3 Q Had you always made in-person visits to
4 potential practices, potential members?

5 A Sometimes.

6 Q When did you begin making in-person visits
7 to practices?

8 A I can't remember specifically.

9 Q Had you always made in-person visits since
10 the time you started working at Context?

11 A No.

12 Q So you started doing that sometime after
13 you were hired?

14 A Yes.

15 Q And do you know again approximately when?

16 A Sometime in 2012 maybe.

17 Q Okay. Do you know why Context began
18 sending MOEs to make in-person house calls?

19 A Just a different way to reach them.

20 Q Who told you to start making in-person
21 visits?

22 A No one.

23 Q Oh, you just volunteered to do it on your
24 own?

Brok Vandersteen March 6, 2014

1 A Yeah.

2 Q Why did you think that that would be an
3 effective way to make sales?

4 A Because offices are busy, and sometimes you
5 need to get in front of them.

6 Q Did you feel that it was -- making direct
7 phone calls wasn't enough?

8 A No. Just another way to reach a potential
9 member.

10 Q Other than the time in Indiana when you
11 were making the personal visit, did you see Healthy
12 Advice's loop at any time?

13 A No.

14 Q Are you familiar with the term switch-out
15 package or hassle-free switch-out package?

16 A Am I familiar with the term?

17 Q Yes.

18 A Vaguely.

19 Q What does that mean to you?

20 A A package of switch-out materials.

21 Q Is the switch-out package a policy that
22 Context uses to encourage practices to switch from a
23 competitor to Context?

24 A No.

Brok Vandersteen March 6, 2014

1 Q In what circumstances would the term
2 switch-out package come up?

3 A I don't recall.

4 Q Did you ever try to sell a hassle-free
5 switch-out package to a practice?

6 A I don't recall.

7 Q Does anyone at Context -- Strike that.
8 Did anyone in Context management talk to
9 you about a switch-out package?

10 A I don't recall.

11 Q What if anything did Rishi Shah tell you
12 about switching HAN practices to Context?

13 A He told me nothing.

14 Q What if anything did Jim Demas tell you
15 about switching HAN practices to Context?

16 A Nothing.

17 Q What did Jeana Loewe tell you about
18 switching HAN practices to Context?

19 A I don't believe she told me anything.

20 Q What if anything did Matt Garms tell you
21 about switching HAN to Context?

22 A I don't remember.

23 Q Do you remember having any conversations
24 with anyone at Context about switching HAN practices

Brok Vandersteen March 6, 2014

1 to Context?

2 A I can't remember any specifics.

3 Q Generally did you have any conversations
4 with anyone about switching HAN practices to
5 Context?

6 A Yes.

7 Q What was the general nature of those
8 conversations?

9 A I can't remember specifically.

10 Q Just generally?

11 A Well, I'm assuming we must have discussed
12 the form.

13 Q The authorization form that we talked
14 about?

15 A Yes.

16 Q Anything else?

17 A No.

18 Q Did you discuss anything about taking down
19 HAN, getting rid of Patient Point, crushing Patient
20 point, anything like that?

21 A Not that I remember.

22 Q Is it possible that you might have said
23 something about taking down HAN or crushing Patient
24 Point?

Brok Vandersteen March 6, 2014

1 A Anything is possible.

2 Q Did Context treat switch-outs from Active
3 Health differently from switch-outs from HAN?

4 A I believe the member of Accent Health would
5 call Accent Health and cancel.

6 Q Okay. So would the member call Healthy
7 Advice to cancel?

8 A That's really up to them.

9 Q Did you on behalf of Context ever call
10 Healthy Advice to cancel a practice on behalf of the
11 practice?

12 A No.

13 Q Did you ever send a form to cancel the
14 practice's relationship -- Strike that.

15 Did you ever send a form directly to
16 Healthy Advice to cancel the practice's relationship
17 with Healthy Advice?

18 A No.

19 Q Do you know if anyone in member outreach
20 ever sent a form to cancel the practice's contract
21 with Healthy Advice?

22 A No.

23 MS. PARK: Are there certain things --
24 well, actually, why don't we take a quick break.

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1 (A recess was taken, after which the
2 following proceedings were had:)

3 MS. PARK: Back on the record.

4 Q Just before the break we were talking
5 about, I think we were talking about the way Context
6 treats Accent's switch-out differently from Healthy
7 Advice.

8 How did you know to treat Accent Health
9 switch-outs differently from Healthy Advice
10 switch-outs?

11 A Just through instruction.

12 Q Who gave you the instruction?

13 A I believe Matt Garms.

14 Q Did anyone else at Context give you that
15 instruction?

16 A No.

17 Q Did that difference in treatment continue
18 throughout the time that you have been at
19 ContextMedia?

20 A I believe so.

21 Q Are there certain things that you as a
22 member outreach executive cannot say about
23 competitors when talking to practices?

24 A Not specifically.

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1 Q Generally speaking are there things that
2 you aren't supposed to say about competitors?

3 A We don't address their contracts of any
4 kind. We don't speak to -- nothing else I can
5 remember. No specific things.

6 Q Was it always the case that you weren't to
7 talk to practices about their contracts with
8 competitors?

9 A Not that I really remember.

10 Q Okay. So when were you told that you
11 should not be talking to practices about their
12 contracts with competitors?

13 A Some time late 2013.

14 Q Who told you that?

15 A I believe it was Jim Demas and Matt Garms.

16 Q How did Jim and Matt convey that to you?

17 A I believe they explained that it's not
18 our -- that we should not be telling members what
19 they -- what their contract is, that they should
20 seek that from their provider.

21 Q How did they, Jim and Matt, convey that to
22 you, is it in a meeting, was it by e-mails?

23 A In a meeting.

24 Q In a meeting. Who else attended the

Brok Vandersteen March 6, 2014

1 meeting?

2 A The MOE team.

3 Q Was anyone else in management present at
4 that meeting?

5 A No.

6 Q Was Rishi present at that meeting?

7 A No.

8 Q Do you know why management conveyed the
9 message that you were not to talk to practices about
10 their contracts with competitors?

11 A I believe to -- well, say that again.
12 would you repeat that?

13 Q Yes. Do you know why Context management
14 told the member outreach team that it's not to talk
15 to practices about their contracts with competitors?

16 A I don't know why specifically.

17 Q Do you know why generally? Do you know why
18 generally?

19 A Maybe they -- well, I don't know what
20 exactly why, to be quite honest. They may have
21 heard someone mention something, and he wanted to
22 nip it in the bud.

23 Q What do you base that on?

24 A I don't know.

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1 Q Okay. You said this was late 2013?

2 A Yes.

3 Q Approximately?

4 A Yes.

5 Q Before that time had you said anything to
6 practices about their contracts with competitors?

7 A Not that I recall.

8 Q Did you tell practices that they didn't
9 need to give notice to Healthy Advice to cancel?

10 A Not that I recall specifically.

11 Q Did you tell any practices that you,
12 Context, had a relationship with Healthy Advice, and
13 that Healthy Advice said it would be okay for
14 Context to take down Healthy Advice's TVs?

15 A I believe it was mentioned in an e-mail.

16 Q What was your basis for saying that?

17 A I don't quite remember.

18 Q Is it possible that you just made that up?

19 A Possibly.

20 Q Did you ever tell a practice that -- well,
21 before I go there. Other than telling you that
22 you're not to talk to practices about their
23 contracts with competitors, is there anything else
24 that you were told that you were not to talk to

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1 practices about?

2 A Not that I remember.

3 Q Did you ever tell a practice that if it
4 signed the authorization form, that Context would be
5 authorized to remove the Healthy Advice screen?

6 A I don't know if that wording was used
7 exactly. I believe I said we would handle the
8 equipment.

9 Q Okay. And is it a true statement, to your
10 knowledge, that as long as the practice filled out
11 the authorization form, that that would give Context
12 the right to take down Healthy Advice's equipment?

13 A That's what I believed.

14 Q Okay. And what was your belief based on?

15 A Just not to tell them it was done.

16 Q Is that what somebody at Context told you?

17 A I don't remember an instance where that was
18 conveyed to me.

19 Q But you got the idea somewhere that it
20 would be okay for Context to take Healthy Advice's
21 screens down as long as the practice filled out the
22 authorization form?

23 A I believe so.

24 Q Do you know, does Context still use that

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1 authorization form?

2 A Not for Healthy Advice.

3 Q Who does it use it for?

4 A I believe for Health Monitor and Health
5 Focus Media.

6 Q When did Context stop using the
7 authorization form for Healthy Advice?

8 A I can't remember exactly. It would have
9 been sometime in the last year or so.

10 Q Okay. And who conveyed the message to you
11 that Context doesn't use the authorization forms
12 with Healthy Advice anymore?

13 A Management.

14 Q Was this in a meeting similar to the one
15 with Jim Demas or was it in an e-mail, or how was
16 that communicated to you?

17 A I believe it was in a meeting.

18 Q Again, with the whole member outreach team?

19 A With the member outreach team, and I
20 believe Matt Garms.

21 Q Did management tell you anything else about
22 the authorization forms during that meeting?

23 A No.

24 Q Did management tell you anything else about

Brok Vandersteen March 6, 2014

1 Healthy Advice during that meeting?

2 A Not that I remember.

3 Q Has management ever talked to you -- yes,
4 has management ever talked to you about the lawsuit
5 between Healthy Advice and ContextMedia?

6 A I was -- we were made aware that there was
7 a lawsuit.

8 Q Do you know when that was?

9 A I don't remember exactly.

10 Q Do you know why Context management made you
11 aware of the lawsuit?

12 A I don't know why.

13 Q After you began working at Context, did you
14 ever tell a practice that you switch out Healthy
15 Advice screens every day?

16 A Maybe.

17 Q It's possible that you have told practices
18 that you switch out Healthy Advice screens every
19 day?

20 A I believe I said on a daily basis.

21 Q Is that a true statement that Context
22 switches out Healthy Advice screens on a daily
23 basis?

24 A I know it was a lot. I don't know exactly

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1 how often.

2 Q What was your basis for saying that Context
3 switches out Healthy Advice screens on a daily
4 basis?

5 A Just believe it was quite a bit.

6 Q Did you do any independent research or look
7 up anything on Quickbase to confirm that?

8 A No.

9 Q Did you do anything to verify that Context
10 switches out Healthy Advice screens on a daily
11 basis?

12 A No.

13 Q Do you know if others made that same
14 statement?

15 A I'm not sure what other people were saying.

16 Q But saying that Healthy -- so you never
17 heard anybody say that statement?

18 A Not that I remember.

19 Q But you told practices that Context
20 switches out Healthy Advice screens on a daily basis
21 as part of your sales pitch to the practices, right?

22 A Yes.

23 Q You tried to do that to convince them to
24 switch to ContextMedia?

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1 A I just said what I believed.

2 Q But you don't know if it was a true
3 statement that Context switches out Healthy Advice
4 screens every day?

5 A I didn't confirm that exact number.

6 Q Did you tell practices that you switched
7 out hundreds of Healthy Advice screens?

8 A I believe so.

9 Q Was that a true statement?

10 A I believe so.

11 Q How do you know that to be a true
12 statement?

13 A Just seems we have done it hundreds of
14 times.

15 Q It seems that you have done it hundreds of
16 times now or at the time it seems like you have done
17 it hundreds of times?

18 A It's always seemed to be quite a bit.

19 Q Did you do any independent research to
20 confirm that you switched out hundreds of Healthy
21 Advice screens?

22 A No, I did not.

23 Q Do you know how many Healthy Advice screens
24 Context has switched from the beginning of time

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1 until now?

2 A I'm not sure of the specific number.

3 Q But you said that ContextMedia switches out
4 hundreds of Healthy Advice screens as part of your
5 sales pitch, right, to practices?

6 A I have said that to practices.

7 Q What do you mean that it seemed like
8 Context switched out hundreds of Healthy Advice
9 screens?

10 A It seemed at the time we were getting a lot
11 of HAN members who were very interested in
12 switching.

13 Q Who were interested in switching, but they
14 didn't actually switch?

15 A No, who had been switching.

16 Q And it seemed like there were hundreds of
17 HAN practices?

18 A Yes, it did.

19 Q Have you told practices that 50 percent of
20 HAN's loop is advertising?

21 A I have said that.

22 Q Is that a true statement?

23 A I know now it's -- I believe it's not.

24 Q How do you know it's not?

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1 A I was told that it was inaccurate, I
2 shouldn't say that.

3 Q Who told you that?

4 A I was approached by Matt Garms, and Jeana
5 had mentioned that as well.

6 Q When did Matt Garms approach you about
7 that?

8 A I don't remember specifically.

9 Q Was it in the last year or before that?

10 A I really don't remember when specifically
11 that conversation occurred.

12 Q When did Jeana Loewe tell you that it was
13 not true that 50 percent of HAN's loop is
14 advertising?

15 A I really don't remember specifically when
16 that would have been.

17 Q When did Jeana Loewe leave Context?

18 A Maybe I believe early 2013.

19 Q Okay. So the conversation with Jeana had
20 to have happened sometime before late 2013, right?

21 A I suppose.

22 Q Did you continue saying that 50 percent of
23 HAN's loop is advertising after you were told by
24 Matt and Jeana that that's not true?

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1 A No.

2 Q At the time that you made that statement,
3 did you do any independent research to confirm
4 whether 50 percent of HAN's loop is advertising?

5 A I did not.

6 Q So you didn't know if that was true or not?

7 A It was a little exaggeration, I believe, so
8 I don't know specifically.

9 Q So it wasn't true that 50 percent of HAN's
10 loop is advertising?

11 A Say that again.

12 Q It wasn't true that 50 percent of HAN's
13 loop is advertising?

14 A No.

15 Q And you said it any way?

16 A well, it was said -- would you mind
17 repeating that?

18 Q what's that?

19 A would you mind repeating that?

20 Q You knew that 50 percent of HAN's loop was
21 not advertising -- I'm sorry. Strike that.

22 when you said 50 percent of HAN's loop is
23 advertising to practices, you knew that that was not
24 a true statement?

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1 A It was an exaggeration.

2 Q Which means that it was not true?

3 A I suppose.

4 Q Did you ever tell a practice that -- Strike
5 that.

6 Did Jeana ever come to talk to you about
7 how she felt uncomfortable about the way the sales
8 team handled itself?

9 A No.

10 Q Did she ever complain to you about feeling
11 uncomfortable with how the sales team handled
12 itself?

13 A Not that I remember.

14 Q Were you ever reprimanded by anyone in
15 Context management for saying statements that were
16 not true to practices?

17 A Yes.

18 Q When was that?

19 A I can't remember specifically, but it would
20 have been sometime last year.

21 Q Who reprimanded you?

22 A Matt Garms individually, as well as senior
23 management.

24 Q Who in senior management?

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1 A Jim Demas, Rishi Shah, Shradha Agarwal.

2 Q Was this -- when Jim, Rishi and Shradha
3 talked to you, were they talking to you all at once
4 or did each of them come talk to you one on one?

5 A It was all at once.

6 Q Did they talk to just you or were they
7 talking to you and other members of the member
8 outreach team?

9 A I believe -- well, I know that, let's see,
10 Jim Demas had pulled the sales team in to have a
11 meeting and said that it had come to his attention
12 that we were saying things that weren't true, and
13 told us that it needed to stop.

14 Q So this was more than just you, this was
15 the whole sales team?

16 A The sales team.

17 Q And this was just Jim or were Rishi and --

18 A So this is with Jim, and then later we were
19 pulled aside again by Jim, Rishi and Shradha to
20 stress the fact that these things cannot be said.

21 Q During that meeting, the second meeting
22 that is, was Jim the only person who was talking or
23 did Rishi and Shradha say something too?

24 A I believe they each said something.

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1 Q How much time passed between the first
2 meeting with just Jim and the second one with Jim,
3 Rishi and Shradha?

4 A I don't remember specifically, but it would
5 have been shortly after.

6 Q Why did Jim, Rishi and Shradha have to have
7 a second meeting with you after Jim had already
8 spoken to the member outreach team, if you know?

9 A Because I think it came to light that I had
10 said specifically certain things that weren't true,
11 and that I needed to stop.

12 Q That you had?

13 A (Indicating.)

14 Q Yes?

15 A Yes.

16 Q How did that come to light?

17 A I don't recall if it was overheard or if
18 they were just reviewing how we were running our
19 practice or running our day.

20 Q And what is it that you said that wasn't
21 true that caused them to have the second meeting?

22 A I had exaggerated the amount of advertising
23 in the loop. And that also I believe -- that's it.
24 Yeah, that's it.

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1 Q So even after Matt and Jeana had told you
2 not to say that 50 percent of HAN's loop is
3 advertising, you still continued to say it?

4 A I really don't remember when that was.

5 Q Okay. But you said that sometime before
6 Jeana left in early '13, or early 2013 she told you
7 not to say that 50 percent of HAN's loop is
8 advertising?

9 A I don't know if she was addressing that
10 specifically. I really can't remember what it was
11 she was addressing.

12 Q Did Jim, Rishi or anyone else in senior
13 management threaten to terminate your employment if
14 you continued saying misrepresentations?

15 A No. I had heard that people may have been
16 in the past, but I wasn't threatened with
17 termination.

18 Q You were not nervous about losing your job
19 at Context?

20 A I haven't really thought about it.

21 Q Did you ever tell a practice that you had
22 just upgraded somebody from down the street from
23 Healthy Advice to Context?

24 A I don't remember specifically.

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1 Q Is it possible that you said -- does that
2 sound like something that you would say that you
3 just upgraded somebody down the street?

4 A Maybe. I don't know.

5 Q It is possible that you could have said
6 that you just upgraded somebody down the street?

7 MR. O'BRIEN: Asked and answered. You can
8 answer again.

9 THE WITNESS: I can answer?

10 MR. O'BRIEN: Yes.

11 A Yeah, I guess it's possible.

12 BY MS. PARK:

13 Q Did you ever tell a practice that they're
14 not legally obligated to stay with Healthy Advice?

15 A Not that I remember.

16 Q Have you ever told a practice that you
17 wanted to upgrade their system without identifying
18 yourself as being with ContextMedia?

19 A Not that I remember.

20 Q Looking at Exhibit 44 from the last
21 deposition. Mr. Vandersteen, have you had a chance
22 to look at Exhibit 44?

23 A Yes.

24 Q And this is an e-mail exchange between you

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1 and Silvia Velazquez in approximately November of
2 2011. Do you see that?

3 A Yes.

4 Q She's talking about an instance in which
5 she asked you to call a practice back tomorrow
6 because she -- a practice that thought Context was
7 HAN taking down the current HAN TV, and she thought
8 Silvia was from Humera. Do you see that?

9 A Yes, I see what you're talking about.

10 Q Do you recall this incident?

11 A I don't.

12 Q Do you know why a practice would get the
13 impression that you, Brok, were calling from Healthy
14 Advice?

15 A No. I think they just lose track, can't
16 keep things straight.

17 Q Did you ever have a conversation with a
18 practice where the practice thought you were with
19 Healthy Advice?

20 MR. O'BRIEN: I'll object to the form. You
21 can answer.

22 A No.

23 BY MS. PARK:

24 Q Did you ever intentionally try to lead a

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1 practice to believe that you were with Healthy
2 Advice?

3 A No.

4 Q Do you know what happened, did you in fact
5 call this lady back at the practice like Silvia
6 asked you to?

7 A I don't remember specifically.

8 Q In all likelihood, would you have called
9 back this person to try to effectuate the sale?

10 A Yeah, I would have tried to call her back.

11 Q Did you talk at all with Silvia about the
12 incident that's being described in Plaintiff's
13 Exhibit 44?

14 A When?

15 Q After she told you about this incident.

16 A I don't recall this incident.

17 Q Do you remember Silvia being upset or
18 yelling at you or telling you that you shouldn't
19 make practices think that you're with Healthy
20 Advice?

21 A I don't remember.

22 Q Do you remember any conversations with
23 Silvia where she reprimanded you or talked to you or
24 told you that you shouldn't make misrepresentations

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1 to practices?

2 A I don't remember. We were always
3 instructed to be clear about it.

4 Q who instructed you to be clear about it?

5 A Management is always instructing us to be
6 clear about who we're calling from.

7 Q who in management instructs you?

8 A Matt Garms and the senior team.

9 Q Anyone specific on the senior team?

10 A No. I don't remember.

11 MS. PARK: This is Group Exhibit 50.

12 (Plaintiff's Group Exhibit 50
13 marked for identification.)

14 BY MS. PARK:

15 Q Mr. Vandersteen, I'm showing you a series
16 of three e-mails, well, four e-mails. And just to
17 save time, they're very similar. But don't feel
18 like you -- read them as long as you need to to get
19 an understanding of what I'm going to ask you about.

20 A Okay.

21 Q Do you recognize the e-mails that were in
22 Group Exhibit 50? For the record, they're e-mails
23 that are authored by you on July 12th, 2011,
24 September 26th, 2011, September 6th, 2012, and

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1 August 31st, 2012.

2 A They look familiar.

3 Q These are e-mails that you would send to
4 potential members, is that right?

5 A Correct.

6 Q And do you see, I guess the common theme of
7 these e-mails is that in each of them you make the
8 representation to the practice that in the last year
9 we've replaced hundreds of Healthy Advice
10 televisions across the country. Do you see that?

11 A I see that.

12 Q And again, what was your basis for saying
13 Context has replaced hundreds of Healthy Advice
14 televisions across the country?

15 A I believe it was a lot. It was quite a
16 bit.

17 Q You believed it was a lot, but you did not
18 know whether Context in fact replaced hundreds of
19 Healthy Advice televisions across the country,
20 right?

21 A I didn't know specifically.

22 Q The fact -- Strike that.

23 You are making the representation that
24 Context replaced hundreds of Healthy Advice

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1 televisions though, right?

2 A Yes, I am saying that we replaced hundreds
3 of their screens.

4 Q But you did not know if that was a true
5 statement?

6 A I didn't know how many specifically we
7 replaced.

8 Q You didn't verify whether Context replaced
9 hundreds of Healthy Advice televisions across the
10 country?

11 A No, I never did.

12 MS. PARK: This will be Group Exhibit 51.
13 (Plaintiff's Group Exhibit 51
14 marked for identification.)

15 BY MS. PARK:

16 Q Mr. Vandersteen, I'm showing you another
17 set of e-mails. Take your time to look at them.

18 But I'll say they're all authored by you,
19 and sent to it appears to be potential member
20 practices. Feel free take a look, and tell me when
21 you're finished.

22 A Okay.

23 Q As I said, these are either a series of
24 e-mails or like blank sort of letters that you sent

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1 to practices.

2 Do you recall sending the e-mails that are
3 in Group Exhibit 51?

4 A They look familiar.

5 Q Okay. Any reason to think that you did not
6 send them?

7 A No.

8 Q And the common denominator, just I'll save
9 us some time. Each of the e-mails you make the
10 representation to the practices that you replace
11 HAN -- Context replaces HAN on a daily basis or
12 Context replaces Healthy Advice every day all over
13 the country. Do you see those statements?

14 A I do.

15 Q Did you know for a fact whether Context
16 replaced Patient Point or Healthy Advice on a daily
17 basis?

18 A I believe we were.

19 Q What was that belief based on?

20 A Based off of just the number of sales we
21 were getting at the time.

22 Q And you believe that every single day
23 Context was switching a practice from Healthy
24 Advice?

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1 A I thought so.

2 Q You had access to the number of practices
3 that were sold and the number of practices of those
4 that were switched from Healthy Advice, didn't you,
5 in Quickbase?

6 A I believe I had access to that.

7 Q You could have verified how many exactly
8 Context had sold or had switched from Healthy
9 Advice, right?

10 A I could have.

11 Q But you just chose not to?

12 A Didn't have time. Busy.

13 Q Okay. Could you look at this. Again,
14 looking at these little numbers on the lower
15 right-hand corner. The one marked Context prod
16 23723. And they're actually not in numerical order.

17 MR. O'BRIEN: What was the number again?

18 MS. PARK: 23723.

19 BY MS. PARK:

20 Q Do you see it?

21 A I do, yes.

22 Q Okay. In the third line you're writing to
23 Sharon, February 11th, 2013. It says last
24 Wednesday, do you see that?

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1 A Yes.

2 Q Okay. It says last wednesday we replaced
3 29 Patient Point screens in one health system alone.
4 what was that statement based on?

5 A A co-worker of mine had gotten a clinic
6 signed up to replace, I believe, 29 screens in a
7 health system.

8 Q which co-worker was that?

9 A I believe it was Patrick Avana (phonetic).

10 Q Do you remember what health system that
11 was?

12 A No, I don't remember.

13 Q Did you see it in Quickbase or did Patrick
14 tell you that?

15 A I kind of like overheard it, seen it
16 happen.

17 Q where did you see it happen?

18 A we sat near each other, so I was able to
19 see that he had gotten them signed up, and he talked
20 about it.

21 Q Do you know if those 29 screens were
22 actually installed?

23 A I believe they were not.

24 MS. PARK: We're done with that. Mark this

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1 as Group Exhibit 52.

2 (Plaintiff's Group Exhibit 52
3 marked for identification.)

4 BY MS. PARK:

5 Q I'm showing you what's been marked Group
6 Exhibit 52. Just take a look at it, and let me know
7 when you're finished.

8 A Okay.

9 Q This is a series of four e-mails that were
10 sent from you to it appears to be various practices
11 in the month of December of 2011. Do you recall
12 sending these e-mails?

13 A They look familiar.

14 Q Okay. Any reason to think that you didn't
15 send them?

16 A No.

17 Q Okay. And the common denominator with this
18 group exhibit is that it looks like in each of them
19 you make the representation that in the last year
20 over 350 health care facilities have switched from
21 Healthy Advice to RHN or to Context. Do you see
22 that?

23 A I do.

24 Q What was your basis for saying that 350 in

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1 particular health care facilities switched from
2 Healthy Advice to Context?

3 A I just believe we had really been replacing
4 a lot of their screens.

5 Q Did you know how many screens Context had
6 switched from Healthy Advice in the year 2011?

7 A Not specifically.

8 Q Did you have any basis to pick the number
9 350 when you sent these e-mails?

10 MR. O'BRIEN: Actually, for the record,
11 some of them say half to 350.

12 MS. PARK: That's true. Okay.

13 Q Well, for the ones that say 350 new health
14 care facilities, did you have any basis to come up
15 with that number 350?

16 A No, I believed it was a lot at the time.

17 Q And what was that belief based on?

18 A The fact that it seemed to be happening
19 quite a bit.

20 Q Okay. Did anyone in Context management or
21 anyone at Context at any time give you the actual
22 number of Healthy Advice screens that switched to
23 Context in any given year?

24 A No.

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1 MS. PARK: Mark this as Exhibit 53.

2 (Plaintiff's Exhibit 53
3 marked for identification.)

4 BY MS. PARK:

5 Q Showing you what's been marked Plaintiff's
6 Exhibit 53. If you could take a look at that, and
7 let me know when you're finished.

8 A Okay.

9 Q This appears to be an e-mail from Matt
10 Garms dated January 12th, 2012 addressed to you and
11 a number of other people. The subject is right way
12 to start the day. Do you see that?

13 A Yes.

14 Q Do you recall receiving this e-mail?

15 A I really don't.

16 Q In the e-mail Matt says, hey, guys and
17 girls, take a look at everything below. These
18 numbers kick ass. Everyone should be very proud.
19 well done. Do you see that?

20 A I do see that.

21 Q And the e-mail he's referring to is an
22 e-mail from Silvia Velazquez to the MS team saying
23 we had 109 switch-outs last year in 2011. Of those
24 15 Accent Health, 26 cable TV, 2 Health Focus, 64

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1 Healthy Advice. Do you see that?

2 A I see that.

3 Q So as of January 12th, you knew that the
4 actual number of switch-outs in 2011 was 64, of
5 Healthy Advice screens was 64. Do you see that?

6 A I see that on the paper. I really don't
7 remember seeing this, though.

8 Q Do you have any reason to doubt that these
9 numbers are correct?

10 A No.

11 MS. PARK: Mark this as Group Exhibit 54.
12 (Plaintiff's Group Exhibit 54
13 marked for identification.)

14 BY MS. PARK:

15 Q Mr. Vandersteen, I'm showing you an exhibit
16 that's been marked Group Exhibit 54. Take a look at
17 it, and let me know when you're finished.

18 A Okay.

19 Q So these are e-mails dated January 16th,
20 17th, and 30th of 2012 that were sent by you to a
21 few different practices. Do you see that?

22 A I do.

23 Q Do you remember sending these e-mails?

24 A I don't remember sending these

Brok Vandersteen March 6, 2014

1 specifically.

2 Q Any reason to think that you did not send
3 them?

4 A No.

5 Q And in the e-mails you say that 350, 200
6 and 150 facilities for rheumatologists switched from
7 Healthy Advice to ContextMedia. Do you see that?

8 A I do.

9 Q And looking at Exhibit 53 that we just
10 looked at, you knew as of January 12th that only 64
11 Healthy Advice TVs switched from Healthy Advice to
12 Context. Do you recall that?

13 A Well, I don't recall seeing that e-mail.

14 Q But you have no reason to think that you
15 didn't receive the e-mail on the 12th?

16 A No.

17 Q But the next day or, you know, five days
18 later or six days later at the end of the month you
19 continued to say that 350, 200 and 150 practices
20 switched from Healthy Advice to Context. What was
21 your basis for saying that?

22 A I think I assumed it. Exaggerated.

23 Q It wasn't true, was it, that 350, 200 and
24 150 facilities switched from Healthy Advice to

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1 Context?

2 A After seeing Silvia's e-mail previously
3 here, I can see now that that's not true.

4 Q Why did you change the number from 350 to
5 200 to 150?

6 A I don't know.

7 Q Were you just kind of picking numbers out
8 of the air?

9 A I suppose so. It was an exaggeration.

10 MS. PARK: Mark this as Group Exhibit 55.

11 (Plaintiff's Exhibit 55

12 marked for identification.)

13 BY MS. PARK:

14 Q Showing you what has been marked
15 Plaintiff's Exhibit 55. If you could just take a
16 look at that, and let me know when you're finished.

17 A Okay.

18 Q Do you remember -- this is an e-mail from
19 you to a prospective member, Friday, November 4th,
20 2011. Do you remember sending this e-mail?

21 A I don't remember sending it.

22 Q Do you have any reason to think that you
23 didn't send it?

24 A No.

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1 Q Just directing your attention to the second
2 sentence in the e-mail. You say, I wanted to follow
3 up with you to stress the fact that the Healthy
4 Advice system you have in your waiting room is far
5 below industry standard. Do you see that?

6 A I do.

7 Q What did you mean by far below industry
8 standard?

9 A Based on feedback from their members, I
10 understood that it wasn't a very satisfactory
11 service.

12 Q What was the industry you were referring
13 to?

14 A The point of care industry.

15 Q Did you do any independent research to
16 verify whether Healthy Advice's system was far below
17 industry standard?

18 A Based on their members' feedback, they
19 seemed pretty clear.

20 Q How many members told you that Healthy
21 Advice's system was far below industry standard?

22 A I couldn't say specifically. I talked to
23 hundreds of people a day.

24 Q Did you have any reason to believe that --

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1 strike that.

2 You had actually no basis for the
3 conclusion that Healthy Advice's system is far below
4 industry standard, did you?

5 A My basis was feedback from HAN's members.

6 MR. O'BRIEN: I'm going to need a break
7 when it's convenient.

8 MS. PARK: I just have one more, then we
9 can stop. I think we're almost done.

10 Q You had mentioned that at some point you
11 said that 50 percent of HAN's loop is advertising.
12 Do you recall that?

13 A I recall reading it in an e-mail.

14 Q An e-mail that you sent to practices?

15 A Yes.

16 Q Is it possible that you said that over the
17 phone too?

18 A I suppose it's possible.

19 Q Okay. Most of your -- you had said most of
20 communications with practices were over the phone,
21 right?

22 A Yeah.

23 Q Is it possible that the statements about
24 replacing HAN's screens on a daily basis, replacing

Brok Vandersteen March 6, 2014

1 hundreds of HAN's screens might have been something
2 that you did say over the phone too?

3 A It might have been.

4 Q And at some point you said that Jeana told
5 you that you shouldn't say that 50 percent of HAN's
6 loop is advertising, right?

7 A I think she had at some point.

8 MS. PARK: Mark this as 56.

9 (Plaintiff's Exhibit 56
10 marked for identification.)

11 BY MS. PARK:

12 Q I'm showing you what's been marked
13 Plaintiff's Exhibit 56. If you could just take a
14 look at that, and let me know when you're finished.

15 A Okay.

16 MS. PARK: This will be 57 if you want
17 to mark that.

18 (Plaintiff's Exhibit 57
19 marked for identification.)

20 BY MS. PARK:

21 Q Do you recall -- this is an e-mail -- well,
22 it's an e-mail from you to Jeana that you're
23 responding to an e-mail that she sent to you. Do
24 you see that?

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1 A Yes, I see that.

2 Q And do you remember receiving and sending
3 these e-mails?

4 A Not specifically.

5 Q Okay. Looking at in the middle of page
6 next to two, Jeana's writing to you, and she's
7 saying, their stated advertisement time is 9 minutes
8 and 30, please do not say that they only have 17
9 minutes of the content and the rest is ads. This
10 isn't published, and we cannot guarantee this to be
11 true. Do you see that?

12 A I do see that.

13 Q The 9 minutes and 30 is approximately 30
14 percent, would you agree with that?

15 A Yes.

16 Q And you responded to Jeana saying, thanks
17 for clarifying, acknowledging that you received this
18 e-mail. Do you see that on the top of the page?

19 A I see that, yes.

20 Q All right. Keep 56 in front of you.
21 Showing you Plaintiff's Exhibit 57. If you could
22 take a look at that, and let me know when you're
23 finished.

24 A Okay.

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1 Q This e-mail is dated March 28th, Exhibit
2 57, that is from you to a practice. Do you see
3 that?

4 A Uh-huh.

5 Q And the day before you got the e-mail from
6 Jeana saying that 9 minutes of Healthy Advice's loop
7 out of 30 is advertising. Do you see that?

8 A I see that, yes.

9 Q And on the next day you told the practice
10 you have a 30-minute power point slide of general
11 information right now, and half of it is
12 advertising. Do you see that?

13 A Yes, I do.

14 Q Why did you say that half of it is
15 advertising when you knew that only 30 percent of it
16 was advertising the day before?

17 A I must have made a mistake.

18 Q It wasn't a true statement, was it, that
19 half of Healthy Advice's slide or loop was
20 advertising?

21 A I don't suppose it was.

22 MS. PARK: We can take a break now.

23 (A recess was taken, after which the
24 following proceedings were had:)

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1 MS. PARK: Back on the record.

2 (Plaintiff's Group Exhibit 58
3 marked for identification.)

4 BY MS. PARK:

5 Q Same as before, Mr. Vandersteen, this is a
6 series of e-mails that were sent by you to different
7 practices.

8 But take your time and look at it if you
9 would like. I don't want to make you feel rushed.

10 A Okay.

11 Q This is a series, like I said, a series of
12 e-mails that you sent from approximately February
13 1st through June of 2012.

14 Any reason -- I know you probably don't
15 recall sending each and every e-mail. But is there
16 any reason for you to think you didn't send these
17 e-mails?

18 A No.

19 Q And the common denominator is that in each
20 of the e-mails you make a representation to the
21 practices that 350, 300 -- 350, in other words a
22 number of practices switched from Healthy Advice to
23 Context. Do you see that?

24 A I see that.

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1 Q And if you look at 53 in front of you, you
2 see that you found out as of January 12th, 2012 that
3 only 64 Healthy Advice practices switched from
4 Healthy Advice to Context. Do you see that?

5 A I see that.

6 Q Why did you keep on making the
7 representation that somewhere between 150 and 350
8 Healthy Advice practices switched to Context?

9 A I was just exaggerating.

10 Q Was there any basis for you to make the
11 statement between 150 to 350 health care facilities
12 were switching from Healthy Advice to Context?

13 A Still seemed like quite a bit. It's just
14 me exaggerating.

15 Q Those were not true statements when you
16 made them, were they?

17 A Doesn't appear to be so.

18 Q If you look at the first one stamped 826 in
19 the lower right-hand corner, I think it's the first
20 one.

21 A Yes.

22 Q Second to last line you say, if you sign
23 up, I'll give you a \$100 American Express gift card
24 to use as you please. Do you see that?

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1 A Yes.

2 Q Was it a common practice for you to give a
3 gift card to potential practices to encourage them
4 to switch to Context?

5 A It was common practice to offer a gift card
6 to just about anybody to become a member.

7 Q Okay. Context frequently offered
8 incentives, gift card incentives to encourage
9 practices to switch?

10 A To simply sign up, whether they had a
11 competitor or not.

12 Q Okay. How often would you say you offered
13 a gift card on behalf of Context to get a member to
14 join?

15 A I'm really not sure.

16 Q About 50 percent of the time?

17 A I really don't know. I wouldn't feel right
18 throwing out a percentage.

19 Q Does Context still offer gift cards to
20 practices to encourage them to sign up?

21 A Yes.

22 MS. PARK: Mark this as Exhibit 59.

23 THE WITNESS: I would like to say that we
24 have the option --

Brok Vandersteen March 6, 2014

1 (Plaintiff's Exhibit 59
2 marked for identification.)

3 BY MS. PARK:

4 Q Showing you what's been marked as
5 Plaintiff's Exhibit 59 --

6 A Did we catch my previous statement?

7 Q What were you saying?

8 A I was just saying that we as MOE's had the
9 option. It wasn't required, it was simply we had
10 the ability to use that as we please.

11 Q Okay. Who gave you the ability -- who at
12 Context gave you the ability to use the gift cards?

13 A Matt Garms.

14 Q Okay. Were you given a set number of gift
15 cards per month or were you just given an unlimited
16 number?

17 A There was no set number.

18 Q Okay. Was there a limit like you can only
19 use up to 5 or 10?

20 A No.

21 Q In your experience did you find that the
22 gift card was helpful in encouraging a practice to
23 sign up?

24 A I found that people like receiving gifts.

Brok Vandersteen March 6, 2014

1 Q So it was helpful in sealing the deal?

2 A I mean, I think that maybe -- yeah.

3 Q Okay. So take a look at Exhibit 59 if you
4 would.

5 A Okay.

6 Q It appears to be a fax that was sent from
7 Heidi at Joint and Muscle Medical Care Services to
8 you on July 13th, 2012.

9 Do you see that? And the date is on the
10 fax line on the bottom, which is upside down.

11 A Okay.

12 Q Do you recognize the letter that's attached
13 to the fax?

14 A Looks familiar.

15 Q What do you understand this letter to be?

16 A I take it as a scare tactic.

17 Q Okay. Do you remember receiving this
18 letter from Heidi?

19 A I don't remember the date. It looks
20 familiar.

21 Q Do you remember talking to Heidi about this
22 letter?

23 A No.

24 Q So do you know if you asked her to send it

Brok Vandersteen March 6, 2014

1 or if she volunteered to send it?

2 A I don't believe I would have asked her to
3 send this.

4 Q But you don't know if you did or you
5 didn't?

6 A I don't remember.

7 Q What did you do with this once after you
8 received it?

9 A I really don't remember.

10 MS. PARK: Okay. I have no further
11 questions.

12 MR. O'BRIEN: I have one.

13 EXAMINATION

14 BY MR. O'BRIEN:

15 Q Mr. Vandersteen, I may have misheard you,
16 but I thought I heard you answer a question with
17 counsel, something like this, to the effect that
18 there is to this day a difference in how
19 ContextMedia treats switch-outs with HAN versus
20 other competitors. Is that in fact the case?

21 A No, no, we require that the HAN member,
22 just like any other competitor member, actually
23 reaches out to their provider and cancel.

24 MR. O'BRIEN: That's all the questions I

Brok Vandersteen March 6, 2014

1 have.

2 MS. PARK: Okay. I have no further
3 questions.

4 MR. O'BRIEN: Signature reserved.

5 MS. PARK: Okay. Thank you.

6 (The witness was excused.)

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Brok Vandersteen March 6, 2014

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)

4 I, JOANNE RYAN, CSR and Notary Public in
5 and for the County of Cook and State of Illinois, do
6 hereby certify that on the 6th of March, 2014, at
7 1:35 p.m., at 222 North LaSalle Street, Chicago,
8 Illinois, the deponent BROK VANDERSTEEN personally
9 appeared before me.

10 I further certify that the said BROK
11 VANDERSTEEN was by me first duly sworn to testify
12 and that the foregoing is a true record of the
13 testimony given by the witness.

14 I further certify that the deposition
15 terminated at 3:55 p.m.

16 I further certify that I am not counsel for
17 nor related to any of the parties herein, nor am I
18 interested in the outcome hereof.

19 In witness whereof, I have hereunto set my
20 hand and seal of office this 10th of March, 2014.

21 _____
22 Notary Public

23
24 CSR No. 084-003334 - Expiration Date: May 31, 2015.

Brok Vandersteen March 6, 2014

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HEALTHY ADVICE NETWORKS, LLC,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:12 CV 00610
)	
CONTEXTMEDIA, INC.,)	
)	
Defendant.)	

I, BROK VANDERSTEEN, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on March 6, 2014; that I have read the foregoing transcript of my deposition, consisting of pages 1 through 110 inclusive, and affix my signature to same.

BROK VANDERSTEEN

Subscribed and sworn to
before me this____day of
_____, 20__

Notary Public

Brok Vandersteen March 6, 2014

MERRILL LEGAL SOLUTIONS
311 South Wacker Drive, Suite 300
Chicago, Illinois 60606
(312) 386-2000

March 10, 2014

Mr. Brok Vandersteen
C/O Mr. Richard J. O'Brien
Sidley Austin, LLC
One South Dearborn Street
Chicago, Illinois 60603

Case: Healthy Advice vs. ContextMedia
No: 1:12 CV 00610
Deponent: Brok Vandersteen
Date taken: March 6, 2014

Dear Mr. Vandersteen:

The above-referenced deposition has been transcribed,
and is ready for review, pursuant to the Rules of
Court.

Please contact our office at your earliest convenience
for an appointment to review the deposition transcript,
or you may contact counsel for a copy of the transcript
for your review.

Upon failure to comply within 30 days, we shall forward
an appropriate affidavit of noncompliance to counsel
without further notice.

Very truly yours,
MERRILL LEGAL SOLUTIONS
(Job#219293)(JR)

cc: Ms. Jeanah Park
Mr. Richard O'Brien

Merrill Corporation - Chicago

(312) 386-2000

www.merrillcorp.com/law

Brok Vandersteen March 6, 2014

1 CASE: Healthy Advice vs. ContextMedia

2 DATE TAKEN: March 6, 2014

3 DEPONENT: Brok Vandersteen

4 PAGE LINE ERRATA_SHEET

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21 (SIGNED) _____ DATE _____

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24